

1894-670 Chancery Causes: William Pennington & vs. Frank Carter &c.
Lee Co.

1 Plat

CA-Estate Dispute
T-Property

To the Hon. Wm. T. Miller, Judge of the Circuit Court of
Lee County Virginia:

Humbly complaining your orators, Wm. Pennington and James M. Carter, would respectfully represent unto your honor that some several years ago one Williamson Carter died seised and possessed of a small tract or parcel of land lying and being in Lee County, on the waters of Stone Creek and on the North side of the Stone mountain, and containing some 130 acres; that said Carter left surviving him a widow and Six children, to-wit Joseph Carter, John M. Carter, Andrew Carter, One of your Complainants, James M. Carter, Frank Carter, and Mary Carter, as the heirs of the said Williamson Carter; that all of said children and heirs are of age except the said Frank and the said Mary Carter and they are infants, that said Joseph sold his undivided interest in said land to one E. S. Wax and wax sold the same to your orator William Pennington and your orator has bought and has deeds for the undivided interests of the said John M. and the said ~~Andrew~~ Carter in the said estate of their said father and he is now entitled to the same

And your orator, William Pennington, will further represent unto your Honor that he has other lands adjoining to the said land herein mentioned, and that the said James M. ~~xx~~ Carter also owns other lands adjoining to the land mentioned in this bill

The said lands being undivided and there being joint owners of the same, your orators are advised that they are entitled to Have the same partitioned among the said owners thereof, subject to the dower rights of the said Widow of the said decedent, whose name is Ellen Carter. The prayer therefore of your orators are that the said Ellen Carter, Mary Carter, and Frank Carter be made parties defendants to this bill of complaint, that they be required to answer the same on oath, that commissioners be appointed

to go upon the said land partition the same among your orators and the said defendats, assigning to the said Ellen Carter one-third of said land in rental value for and during her natural life, three-sixths of the same (if the same can be done without material injury to the others interested therein) adjoining the other lands of the said complainant William Pennington and one-sixth of the same to the said ~~James, the said~~ the said Mary Carters and the said Frank Carter, and that all other and full relief be granted unto your orators, and that a guardian ad litem ~~be appointed~~ be appointed for the said infants Frank and Mary Carter. And that a XXXX process may issue &c And they will ever &c.

Pennington Brothers p. D.

William Cunningham et al

v.s. } Beecher Chy.

Frank Carter et al.

Plffs costs

November Term 1894
Decree final See order
Book 4 Page 71

Frank Carter et al
Mary Carter

Wm Cunningham et al
vs } Beecher Chanany

Frank Carter et al
1894. 2nd May 1894
Filed & pa at SD of Ar
11 1st June Rules taken the
last mori day in way
Decree nisi confirmed
& cause set for hearing
by Plaintiff

To the Hon. W. T. Miller, Judge of Circ. Court of Lee county:

The separate answer of Frank Carter and Mary Carter, infants under the age of twenty-one years, by E. W. R. Ewing, their guardian ad litem, assigned to defend them in this suit, to a bill in chancery exhibited against them and others in this Honorable court by William Pennington:

The respondents, reserving to themselves the benefit of all just exceptions to the said bill, for answer thereto, or to so much thereof as they are advised that it is material that they should answer, by their said guardian ad litem, answer and say: That they are infants of tender years, and by reason of their infancy are incapable of understanding or of taking care of their rights or interests. They, therefore, by their guardian ad litem, commend themselves and their rights and interests to the protection of the court, and pray that no decree may be pronounced which will tend to their prejudice.

And having fully answered, the said respondents pray to be hence dismissed with their reasonable costs in this behalf expended, and they will ever pray, &c.

E. W. R. Ewing,

Guardian ad litem for
Frank Carter and
Mary Carter.

*Sworn to before me this the 7th day
of June 1894*

*A. B. Munsiey
Clerk*

Ewing.

William Pennington et al

v. { Ans. G. A. L.

Frank Carter et al

Filed open court this
the 9th day of June 1894
A B Munsey
Clerk

G. A. L. Fee
\$5.00

Wm Pennington et al Complt

vs

In Chancery.

Frank Carter et al Defts

This cause came on again this day to be heard upon the papers formerly read therein and the report plat and partition of L. C. Elliott, W. M. G. Barron and C. M. Zion filed in this cause on the 15th day of October, 1894; and it appearing that the same is unexcepted to, it is adjudged, ordered and decreed that said plat, report and partition be and the same is hereby confirmed; and that the plaintiff Wm Pennington take and hold in fee simple, subject to the dower rights of Mrs. Ellen Carter therein, lot No. One described in said report and shown on said plat; and that Mary Carter take and hold in fee simple, subject to said widow's dower rights therein, lot No. two described in said report and shown on said plat; and that lot No. 3 be assigned to ~~xxx~~ the said Jas. M. Carter and Frank Carter, ^{jointly} in fee simple subject to the dower rights of said widow; and ~~that~~ ~~xxx~~ the said Wm Pennington will pay three-sixths of the taxable costs of this suit. Mary Carter an.

sixth thereof, and that Jas M.
and Frank Leater shall pay
two-sixths thereof, and execution
may issue thereon in favor of
the officers of the Court. And
there being nothing else to
be done herein this cause is
stricken from the docket.

Wm Remington shd
not decree final

Frank Leater shd

Copied in Chancery
Order Book

Page 71

Entered this
Nov. 13 1894

W. J. M.

Wm Pennington et al -

v.s. } See Whaley -
Frank Carter et al -

This cause came on to
be heard upon the bill of the said
Complainant and the answer of E. H. R.
Tewing Guardian ad litem for Frank
Carter & Mary Carter infants under
the age of 21 years - and was
argued by counsel - For all
which and it appearing to the
court that process had been served
^{more than} 15 days before the first day of this
term of the court - and the other
defendants, Eliza Carter ~~was~~ not appearing
the complainant's bill as to her is taken
~~pro-confessed~~ -; and it therefore
adjudged, ordered, and decreed
that Charles Elliott, ^{and L. Mc. Gown} W. H. Starnes
who are hereby appointed counsors
for the purpose go upon the land
in the bill & proceedings mentioned
and make partition of the said land
so that $\frac{1}{3}$ of the same shall fall to
the share of Eliza Carter, widow of Wm
Carter deceased as her dower life
interest, $\frac{1}{6}$ to Frank Carter, $\frac{1}{6}$ to Mary

Carter, $\frac{1}{16}$ to James Carter $\frac{1}{16}$ to Wm
 Pennington of the remainder after the
 said widow's portion is assigned
 to her. And the said ^{James} Carter being
 the owner of other lands adjoining
 his lands the Commrs will lay
 off his portion ^{if practicable} next to his other lands,
 and the said Wm Pennington being
 the owner of land adjoining the said
 land to be partitioned will assign
 and lay off to him his portion so
 it will fall next to his other lands
 And the said Commissioners will
 report their action to ^{this} Court at the
 next time, and this cause is
 continued -

Wm Pennington et al

vs. decd -

James Carter et al

Entire Chy Ord Book 4 P. 15

Carter this June
 11th 1894.

174 Dms

Virginia

At a circuit Court continued and held for Lee County at the Court house thereof on Monday June 11th 1894

W^m Pennington et al

Plff

vs

Frank Carter et al

Def

} In Chancery

This Cause came to be heard upon the ~~petition~~ bill of the said complainants and the answer of E W R Ewing Guardian ad litem for Frank Carter and Mary Carter infants under the age of 21 years and was argued by Counsel. For all which, and it appearing to the Court that process had been served more than fifteen days before the first day of this term of the Court, and the other defendant Ellen Carter not appearing the complainants bill as to her is taken pro Confesso, and it is therefore adjudged, ordered, and decreed that Charles Elliott W N L Barron and L M Zion who are ^{hereby} appointed Comrs for the purpose go upon the land in the bill and proceedings mentioned and make partition of the said land so that $\frac{1}{3}$ of the same shall fall to the share of Ellen Carter widow of W^m Carter deceased for her down life time interest. and $\frac{1}{6}$ to Frank Carter $\frac{1}{6}$ to Mary Carter $\frac{1}{6}$ to James Carter and $\frac{1}{6}$ to W^m Pennington of the remainder after the said widows portion is assigned to her. And the said James Carter being the

owner of other lands adjoining his lands the
Comrs will lay off his portion next to his
other lands if practicable. and the said ~~Wm~~
Perrington being the owner of other lands
adjoining the said land to be partitioned will
assign and lay off to his portion so it will
fall next to his other lands if practicable.
And the said Commissioners will report
their action to this Court at the next term
And this Cause is continued

A Copy sent

AR3 Munsey Clerk

Wm Perrington et al
vs } copy of Decree
Frank Carter et al

@ Clerk \$1.00

Virginia

At a Circuit Court Continued
and held for Lee County at the Court-
house thereof on Monday June the 11th 1894

Wm Pennington et al Plffs

vs

Frank Carter et al Defs.

} In Chy

This Cause came on to be heard upon
the bill of the said Complainant, and the
answer of E. W. R. Ewing Guardian ad litem
for Frank Carter and Mary Carter infants
under the age of 21 years, and was ar-
gued by Counsel. For all of which and
it appearing to the Court that process had
been served for more than 15 days before
the first day of this term of the Court
and the other defendant Ellen Carter not
appearing the Complainant's bill as to her
is taken pro Confesso; and it is therefore
adjudged, ordered and decreed that Charles
Elliott, W. N. L. Barron and L. M. Zion
who are appointed Comrs for the purpose
go upon the lands in the bill and proceed-
ings mentioned and make partition of the
said land so that $\frac{1}{3}$ of the same shall
fall to the share of Ellen Carter widow
of Wm Carter deceased or dower life inter-
est and $\frac{1}{6}$ to Frank Carter $\frac{1}{6}$ to Mary Carter

$\frac{1}{6}$ to James Carter and $\frac{3}{6}$ to Mrs Pennington
of the remainder after the said widow por-
tion is assigned to her. And the said
James Carter being the owner of other lands
adjoining these lands the Comrs will lay
off his portion next to his other lands if
practicable. and the said Mrs Pennington
being the owner of other lands adjoining
the said land to be partitioned will assign
and lay off his portion so it will fall
next to his other lands if practicable
And the ^{said} Comrs will report their action
to this Court at the next term, And
this Cause is continued

A copy

Teste; A B Munsey Clerk

Mrs Pennington
A Copy of Decree
Frank Carter et al

To 1st Day of Novr.

Executed by Delivering
a copy of the within
Decree to W. H. Es.

Barron also a copy
of same to L. M.
Byron this day

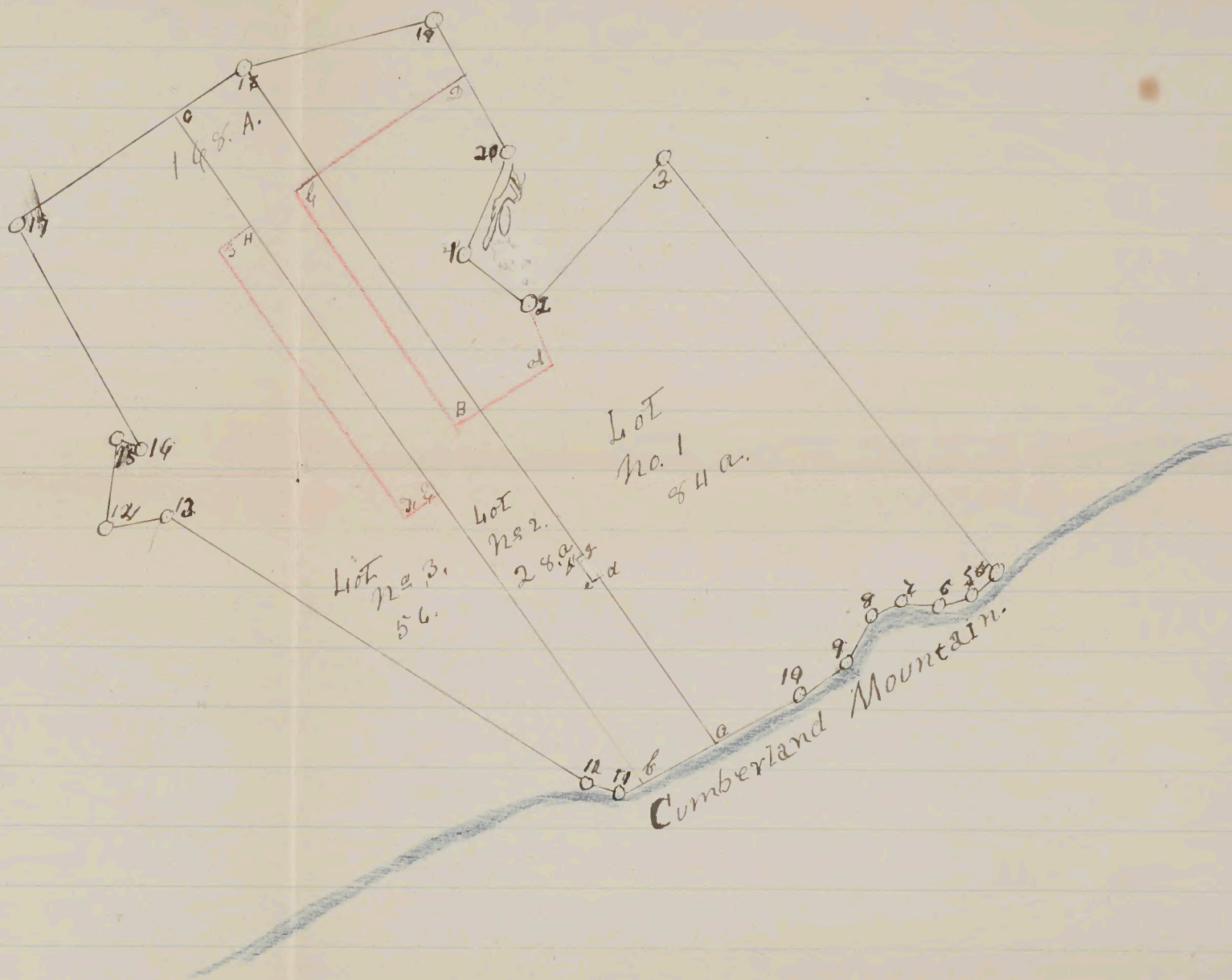
The 18-1894
L. M. Wade D. S. for
L. E. Filmer
S. L. Co.

Clerk \$1.50

Platt.



W



E

Wm Pennington et al. Plff

vs.

Frank Carter et al. Deft

In Chancery

To the Honorable W. D. Miller Judge of the Circuit Court of Lee Co: Va. In pursuance of an Order emanating from your Honor Court in the above styled cause, dated June the 11th 1894.

We your Commissioners appointed by your Honor. To go upon the land in the bill mentioned, and partition the Land between those entitled thereto. Proceeded on the 24 day of September 1894. To comply with said Order. and beg leave to report as follows. We first Surveyed the Boundary. Which designated on the Plat, by the figures. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20.

Beginning on a Whiteoak Stump near an Apple tree and at the Garden railing. S 51° E 21½ poles to Two Spruce Pines (one down) on the foot of the mountain N 42° E 52 poles along the Side of the Mountain to a Beech and Two Maples Wm Pennington's corner, and with his line S 38½° E 138 poles up the Mountain to a Stake and Black Pine on top of Cumberland Mountain. Thence with the Top S 44½° W 9 poles to a Chestnut S 71½° W 9 poles to a Stake. N 86° W 10 poles to a Small Hickory S 42° W 9 poles to a Hickory (now down) S 28½° W 14 poles to a Birch S 57° W 14¾ poles to a Black Pine S 61° W 53½ poles to a Stake in a low gap. N 73½° W 9 poles to Three Black Pine on a high point. Thence leaving the top of said Mountain N 56° W 128 poles to a Spruce Pine and Whiteoak (now dead), a corner to the old church lot. near the foot of the mountain S 79½° W 16½ poles to a Spruce Pine on the South bank of Stone

Creek, thence down ^{the creek} N $7\frac{1}{2}$ E 24 poles to a Stake on the north bank of said creek. S $68\frac{1}{2}$ E 7 poles to a Gum. on the South bank of the creek. Gum now a stump, marked a Poplar Maple & Hitchhail all saplings. Thence crossing the Creek N $28\frac{1}{4}$ W 66 poles to a Stake Dogwood Maple. Two Sowerwoods & Black oak all bushes on sloping ground, N $35\frac{3}{4}$ E 72 poles to a Hickory on a Spur N $76\frac{1}{2}$ E 50 poles to a Stake on a rise about one pole East of a small House in Pennington line S $23\frac{1}{2}$ E 42 poles to two Whiteoaks on a hill side now down, S $17\frac{1}{2}$ W 29 poles to the Beginning containing 168 acres. We then layed off ~~Mr.~~ Pennington's interest in the entire lands. and adjoining his other lands which is designated by the figures and small letters 1. 2. 3. 4. 5. 6. 7. 8. 9. a. d. e. f. g. 17. 18. 19. 20.

Beginning on a Whiteoak stump near a apple tree and at the garden railings S 51 E $21\frac{1}{2}$ poles to two Spruce Pines on the North Side of the Mountain. (one Pine down) N 42 E 52 poles to a Beech & two Maples. S $38\frac{1}{2}$ E 138 poles to a Stake & Black Pine on top of Cumberland Mountain & with it S $44\frac{1}{2}$ W 9 poles to a Chestnut S $71\frac{1}{2}$ W 9 poles to a Stake N 86 W 10 poles to a small Hickory S 62 W 9 poles to a Hickory now down, S $28\frac{1}{2}$ W 14 poles to a Birch, S 57 W $14\frac{3}{4}$ poles to a Black Pine S 61 W 24 poles to 3 Black Pines Thence leaving the top of the Mountain N 34 W 52 poles to a Stake below a bunch of Laurels on a Rock. S 57 W 2 poles to a small Chestnut N 34 W $8\frac{1}{2}$ poles to a Chestnut Oak on a rise N 57 E 2 poles to a Stake below the Spring. where ~~Mr.~~ Pennington Pipes his water from. and 15 links west of a Spruce Pine N 34 W 152 poles crossing Stone Creek to a Hickory on a Spur N $76\frac{1}{2}$ E 50 poles to a Stake on a rise about one pole East of a small

House in ~~Mr.~~ Pennington line and with the same S $23\frac{1}{2}$ E 42 poles to 2 Whiteoaks now down. S $17\frac{1}{2}$ W 29 poles to the Beginning containing 84 acres and marked Lot No. 1.

We layed off and assigned to Mary Carter lot No. 2. containing 28 acres. and is designated by the letters and figure. 17. g. f. e. d. a. b. c.

Beginning on a Hickory on a spur. a corner to Lot no. 1. S 34 E 152 poles to a Stake below the Spring where ~~Mr.~~ Pennington Pipes his water from 13 Links from a Spruce Pine S 57 W 2 poles to a Chestnut on a rise S 34 E $8\frac{1}{2}$ poles to a small Chestnut N 57 E 2 poles to a Stake below a bunch of Laurels. on a Rock. S 34 E 52 poles to 3 Black Pines on top of the Mountain and along it S 61 W 24 poles to a Maples Thence leaving the top of the Mountain N 34 W 210 poles to a Stake Sowerwood & Maple N $33\frac{3}{4}$ E 21 poles to the Beginning

We layed off and assigned to George M Stapleton the shares of Frank Carter, James Carter. who has bought the shares of the said Carters. we have layed them off together on the west side, adjoining his other lands. And is designated by the following figures and letters c. b. 10. 11. 12. 13. 14. 15. 16. and containing 56 acres Lot No. 3

Beginning on a Stake Sowerwood & Maple on the old line an with Mary's Carters. S 34 E 210 poles to a Maple on top of the Mountain Thence with the top S 61 W $8\frac{1}{2}$ poles to a Stake in a low gap N $73\frac{1}{2}$ W 9 poles to 3 Black Pines on a high point thence leaving the top of the mountain N 56 W 128 poles to a Spruce Pine & Whiteoak now dead a corner to the old church lot near the foot of the Mountain S $79\frac{1}{2}$ W $16\frac{1}{4}$ poles to a Spruce Pine on the South bank of Stone Creek.

Thence down the creek $N 7\frac{1}{2} E$ 24 poles to a Stake on the north bank of the Creek. $S 68\frac{1}{2} E$ 7 poles to a Burn on the South bank of the Creek, Gum now dead, marked a Poplar Maple & White-hazel. Thence crossing the Creek $N 28\frac{1}{4} W$ 44 poles to a Stake Dogwood Maple 2 Sowerwood & Blackoak. all bushes on sloping ground. $N 55\frac{1}{2} E$ 84 poles to the Beginning

We then layed off The widow Ellen Carter Third in the lands first we layed off 13 acres in Mrs Pennington share including the buildings nearly all of the Orchard garden & most of the cleared land, and then crossing on Mary Carters share laying off 3 acres and taking apart of the remainder of the fruit trees and some cleared land which is designated by the red lines on Plat. and the following figures and Capital letters I. A. B. C. D. 19. 20.

Beginning on a Whiteoak Stump near an Apple tree $N 17\frac{1}{2} E$ 29 poles to 2 Whiteoaks now down, $N 23\frac{1}{2} W$ 22 poles to a Stake on the Side of the hill $S 60 W$ 50 poles to a Small chestnut and Hickory on the Side of a ridge. $S 34 E$ 73 poles to a Stake near some small Dogwoods. on the Side of the Mountain $N 56 E$ 30 poles to a White Walnut west of Mrs Pennington Water Pipes.

$N 18\frac{1}{2} E$ 14 poles to 2 Spruce Pines one down, $N 54 W$ 21 poles to the Beginning We then layed off $5\frac{1}{4}$ Acres out of George N Stapleton share including some of the cleared land and timber for the widow Ellen Carter, which is designated by the Capital letters E. F. G. H. Beginning on a crooked Maple on Mary Carters line $S 52 W$ 10 poles to a Chestnut oak on the Side of a steep hill. $S 34 E$ 84 poles to a large Rock on the north Side of the mountain $N 56 E$ 10 poles to a Stake. Thence with Marys Carters line $N 31 W$ 84 poles

To The Beginning This piece is also designated by the red lines on lot No 3. on Platt. which the widow Ellen Carter has easy access to by the public road passing across the land. We have give her, we think a good share in the land. Taking in consideration the mental value of the land, we give her timber on the Ridge and Mountain. We could not lay this land off any other way without injuring the heirs. We give W^m Pennington the right of way to the water that runs into Stone Creek. below the Widow Ellen Carter as it runs on her Downer. We also give George N Stapleton the right of way to the Spring at the Widows where she gets her water. We file a Platt herewith making it a part of our report all of which is Respectfully Submitted.

C. C. Elliott, }
 W. N. S. Barron, } Comd,
 L. M. Zion. }

Fees.

C. C. Elliott Surveyor. 7 days.	\$14.00
W. N. S. Barron. Com. 4 1/2	\$9.00
L. M. Zion Com. 4 1/2	\$9.00
George N Stapleton. 4 1/2	4.50
Henry B. Sprinoble 4 1/2	4.50
	<u>\$41.00</u>

Wm Pennington et al
vs Comrs Report
Frank Carter et al

Filed October the 18th 1894
A B Munsey
Clerk

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon

John M. Carter Andrew Carter
Frank Carter and Mary Carter

to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held for the said Court on the *3rd* Monday in *May*, 189*4*, to answer a bill in Chancery, exhibited against *them* in our said court by *Wm Pennington*

And have then there this writ.

Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house,

the *3rd* day of *May*, 189*4*, and in the 11 *8th* year of the Commonwealth.

A B Munsey Clerk.

Wm Pennington

US.

}

SUBPOENA
IN CHANCERY.

John M Carter et al

Pennington Bros p. q.

To 2nd May Rules,

Circuit Court.

Executed May 16 1894
By delivering a
copy of this sum
in Chancery to
John M. Carter
William Carter
Frank Carter
Andrew Carter
Mary Carter
M R Kirk & S
for G L Helanary
S & L

Wm Pennington et al
vs Rice & Lehou
Frank Carter et al

William Pennington's Costs	\$36.17
James M + Frank Carter	24.16
Mary Carter	12.23
Total	\$72.49

November Term 1894
Decree final See ^{Chas} Order
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